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REVISOR OF STATUTES

RE: Annual Report on Obsolete, Unnecessary, or Duplicative Rules, as Required by Minnesota Statute § 14.05, Subdivision 5

Minnesota Statute § 14.05, Subdivision 5, states:

*“By December 1 of each year, an agency must submit to the governor, the legislative coordinating commission, the policy and funding committees and divisions with jurisdiction over the agency, and the revisor of statutes, a list of any rules or portions of*

*rules that are obsolete, unnecessary, or duplicative of other state or federal statutes or rules. The list must also include an explanation of why the rule or portion of the rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules. By December 1, the agency must either report a timetable for repeal of the rule or portion of the rule, or must develop a bill for submission to the appropriate policy committee to*

*repeal the obsolete, unnecessary, or duplicative rule. Such a*

*bill must include proposed authorization to use the expedited procedures of section 14.389 to repeal or amend the obsolete, unnecessary, or duplicative rule. A report submitted under this subdivision*

*must be signed by the person in the agency who is responsible for identifying and initiating repeal of obsolete rules. The report also must identify the status of any rules*

*identified in the prior year's report as obsolete, unnecessary, or duplicative. If none of an agency's rules are obsolete, unnecessary, or duplicative, an agency's December 1 report must state that conclusion."*

The Minnesota Pollution Control Agency (MPCA) has conducted an extensive internal review of its rules, and has requested help from external customers (e.g. Minnesota Chamber of Commerce, Association of Minnesota Counties and a number of representatives of environmental advocacy groups) to identify rules that are obsolete, unnecessary or duplicative. As a result of this review, the MPCA has identified the following rules or rule subparts that are obsolete and should be repealed or amended:

- Minn. R. 7011.0725, subp. 2. This subpart identifies tests applicable to operators of Industrial Process Equipment. The U.S. Environmental Protection Agency has promulgated performance test methods that are now considered the industry standard, which makes the tests identified in 7011.0725, subp. 2 obsolete.
- Minn. R. chapter 7021. This chapter establishes an acid deposition standard for geographic regions that the MPCA has determined to be sensitive areas. This chapter can be repealed because other state and federal emission control requirements now adequately address sulfur dioxide emissions and the deposition standard is no longer needed for enforcement or environmental protection purposes.
- Minn. R. part 7053.0405, subps. 3, 4, and 5. These subparts relate to aquaculture facilities and contain language regarding the methods a permittee can follow to request a variance. All of the variance provisions are applicable through other state rules and are obsolete.
- Minn. R. parts 9210.0120, subpart 5 (Grant Application Procedures), 9210.0810, subp. 1, (Request for Proposals) and Minn. R. part 7076.0140, subp. 1 and 2, (Notice of Financial Assistance Availability). These rules relate to the

administration of various grants and contracts. In 2012, the traditional process for providing notification of these types of activities was affected by the implementation of the statewide SWIFT accounting system. SWIFT provides an acceptable method of public notice for those solicitations conducted within the SWIFT system. The parts of these rules that refer to providing notice specifically through publication in the *State Register* were rendered obsolete by the implementation of the new SWIFT system and should be amended to reflect the current requirements. Minn. R. part 7076.0140, subp. 2 also includes obsolete conditions that specify the MPCA's process for maintaining mailing lists and providing notification that must be revised to reflect current practices.

- Minn. R. parts 9210.0300 to 9210.0380. These rules relate to the Solid Waste Processing Facility Demonstration Program, which was a forerunner to the current Solid Waste Processing Facility Capital Assistance Program. The requirements relating to this program are now obsolete and the rules can be repealed.

• Minn. R. part 9220.0530, subp. 6. This subpart requires that waste tire transporters submit their operating records to the MPCA four times yearly. Since this rule was adopted, the development of a well-established infrastructure for managing waste tires led to a reduced need for MPCA oversight of waste

tire regulatory activities. In 2002, the MPCA informed the Legislature that the waste tire program was being eliminated and tire processing and storage facilities would be regulated through the solid waste permit. A January 2007 MPCA memorandum clarified program interests and roles for regulating the waste tire program and stated that waste tire transporters must prepare monthly operating records and make them available to the MPCA staff upon request but will not be required to submit the reports on a quarterly basis as required under Minn. R. 9220.0530, subp. 6. The MPCA has not required transporters to submit quarterly reporting since 2007. The MPCA intends to follow current practices outlined in a program management decision and therefore, the requirements of Minn. R. 9220.0530, subp. 6 are obsolete.

The Minnesota Pollution Control Agency's planned process for the repeal of the identified obsolete rules.

The MPCA will prepare a policy bill for consideration during the 2013 Legislative Session which will include the repeal of the obsolete chapter addressing acid deposition control (Minn. R. ch. 7021), the obsolete rule parts relating to Solid Waste Processing Facility Demonstration Program (Minn. R. 9210.0300 to 9210.0380) and the requirement for the submittal of operating records from waste tire transporters (Minn. R. 9220.0530, subp. 6). The remaining obsolete provisions will be addressed through administrative rulemaking conducted by the

MPCA. These changes require the development of alternative language or more extensive revisions and are not amenable to a legislative repeal of the obsolete subparts. The MPCA will address these obsolete provisions by either incorporating them into other rulemaking activities related to those rule chapters or the MPCA may propose an omnibus rulemaking that will address a number of non-technical, “housekeeping” amendments at one time.

Status of obsolete rules identified in the Minnesota Pollution Control Agency’s 2011 Obsolete Rules Report.

In the 2011 Obsolete Rules Report, the MPCA identified one rule that is obsolete. Minn. R. 7002.0025, subp. 2a, newly permitted facilities, was identified as obsolete. This rule was repealed in the 2012 Legislative Session (Laws 2012, chapter 272, section 98):

*Sec. 98. **REPEALER.***

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“(a) Minnesota Statutes 2010, sections 84.946, subdivision 3; 86A.12, subdivision 5; 89.06; 90.042; 97A.4742, subdivision 4; 103G.705; 115.447; 115A.07, subdivision 2; 115A.965, subdivision 7; and 216H.07, subdivision 4, Laws

2011, chapter 107, section 105, and Minnesota Rules, parts 7002.0025, subpart 2a; 7011.7030; 7021.0010, subpart 3; 7021.0050, subparts 1, 2, and 3; and 7041.0500, subparts 5, 6, and 7, are repealed. (b) Minnesota Statutes 2011 Supplement, sections 86B.508; and 86B.811, subdivision 1a, are repealed.”

### Cost of preparing this report

In compliance with Minn. Stat. § 3.197, the cost of preparing this report is as follows:

Staff cost: \$9,450.00. This includes time for review of rules, customer research and the time to complete the report.

If you have any questions regarding this report, please contact me at 651-757-2681.

Sincerely,



Kirk Koudelka

Assistant Commissioner

KK/CN:wgp

Attachment

cc: Senator John Marty

Senator David Tomassoni

Representative David Dill

Greg Hubinger, LCC Director

—Attachments: \_\_\_\_\_



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